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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ROMAN ZELTSER, ANNA TYUTYUNIK, and
JARED BROCK, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

MERRILL LYNCH & CO., INC., MERRILL
LYNCH, PIERCE, FENNER & SMITH, INC.,
and BANK OF AMERICA CORPORATION,

Defendants.

No. 13 Civ. 1531 (FM)

**DECLARATION OF GREGG I. SHAVITZ IN SUPPORT OF PLAINTIFFS' MOTION
FOR CERTIFICATION OF THE SETTLEMENT CLASS, FINAL APPROVAL OF THE
CLASS ACTION SETTLEMENT, AND APPROVAL OF THE FLSA SETTLEMENT**

I, Gregg I. Shavitz, declare as follows:

1. I am a partner and founder of the law firm of Shavitz Law Group, P.A. ("SLG") Plaintiffs' counsel herein. SLG is a 6-attorney firm based in Boca Raton, Florida that focuses on

representing workers as plaintiffs in employment-related matters, including claims based upon individual and class-wide violations of state and federal wage and hour laws. We serve as putative Class Counsel in this matter, along with Outten & Golden LLP (“O&G”) and The Young Law Firm, P.C. (“Young”).

2. Along with lawyers from O&G and YOUNG, I have been one of the lawyers primarily responsible for the prosecution of Plaintiffs’ claims on behalf of the various classes in the above-styled matter.

3. I make these statements based on personal knowledge and would so testify if called as a witness.

Firm Background

4. SLG has significant experience prosecuting wage and hour class and collective actions such as this one.

5. Since the founding of the Shavitz Law Group, P.A. in 1999, the firm has represented employees in thousands of unpaid overtime and minimum wage claims in both individual cases and collective & class actions in Florida and across the United States. The firm is highly experienced in collective and class action litigation for unpaid wages.

6. In recent years, the firm has served or been appointed as class counsel or co-class counsel in the following cases, among others:

Clem v. Keybank, N.A., S.D.N.Y. Case No. 13 Civ. 789

Yuzary v. HSBC Bank USA, N.A., S.D.N.Y. Case No. 12 Civ. 3693

Beckman v. KeyBank, N.A., S.D.N.Y. Case No. 12 Civ. 7836

Hernandez v. Merrill Lynch & Co., Inc., et al., S.D.N.Y. Case No. 11 Civ. 8472

*Palacio v. E*TRADE Financial Corp., et al.*, S.D.N.Y. Case No. 10 Civ. 4030

Stewart v. Prince Telecom, et al., S.D.N.Y. Case No. 10-civ-4881

Fiore v. Goodyear Tire & Rubber Co., M.D. Fla. Case No. 2:09-CV-843-FtM-29SPC

Hosier v. Mattress Firm, Inc., M.D. Fla. Case No. 3:10-cv-00294-TJC-JRK

Nash v. CVS Caremark Corp., D.R.I. Case No. 09 Civ. 79

Romero v. Florida Power & Light Company, M.D. Fla. Case No. 6:09-cv-1401-Orl-35-GJK

Saliford v. Regions Financial Corp. et al., S.D. Fla. Case No. 10-610310-CIV-Torres

Raley v. Kohl's Corporation, et al., M.D. Fla. Case No. 8:09-cv-2340

Simpkins v. Pulte Home Corporation, M.D. Fla. 6:08-cv-00130-PCF-DAB

Biscoe-Grey v. Sears Holding Corp., S.D. Fla. Case No. 09-81408-Civ-Marra / Johnson

Mayfield v. Lennar Corp., M.D. Fla. Case No. 6:08-cv-426-Orl-31-DAB

Ellerd v. County of Los Angeles, C.D. Cal. Case No. CV05-1211 SVW (CWX)

Cerrone v. KB Home Florida, LLC et al., S.D. Fla. Case No. 07-14402-Civ-Martinez

Lewis v. Iowa College Acq. Corp. & Kaplan Higher Educ. Corp., S. D. Fla. Case No. 08-61011-Civ-Jordan

Patterson v. Palm Beach County School Board, S. D. Fla. Case No. 07-80240-Civ-Hurley

7. I am an experienced trial attorney and member of the bar of the U.S. District Court for the Southern District of Florida and the Florida Bar since 1994, and am AV rated by Martindale Hubbell. My practice concentrates on representing Plaintiffs in FLSA cases. I have represented tens of thousands of such Plaintiffs over that period of time. Additionally, I have lectured in the past at seminars sponsored by the Labor and Employment Section of the Florida Bar, and have spoken at the Labor and Employment Section Certification Review Seminar on two separate occasions as well as the Academy of Florida Trial Lawyers Workhorse Seminars. I have also been awarded Florida Trend Magazine's Legal Elite for various years including 2014

in the area of Labor & Employment law; South Florida Legal Guide – Top Lawyer – Wage and Hour law – 2009-2013; Top Lawyer Up and Comer – Wage and Hour law – 2004, 2006, and 2009; and South Florida Legal Guide – Top Lawyers List – 2009-2013; among other awards and honors. I have also earned the distinction of Top Lawyer in Palm Beach Illustrated (2011) and am a lifelong fellow of the Florida Bar Foundation.

8. I have held the highest AV Peer Review Rating from LexisNexis Martindale-Hubbell for preeminent attorneys from 2000 to the present.

9. I am a graduate of the University of Miami School of Law with an undergraduate degree from Tufts University.

10. I have been admitted to the Florida Bar since 1994 and am also admitted to U.S. District Courts for the Southern, Middle and Northern Districts of Florida, the U.S. Eleventh Circuit Court of Appeals and U.S. Third Circuit Court of Appeals.

11. Attorney Susan H. Stern is Of Counsel to SLG and has been a member of the Florida Bar since 1990 when she received her Juris Doctor degree, *cum laude*, from Georgetown University Law Center. She joined SLG in 2011 after garnering years of experience in complex employment litigation with Jackson Lewis LLP in Miami, Florida and Proskauer Rose in Boca Raton, Florida. Ms. Stern is admitted to the Florida Bar, the U.S. Districts for the Southern District of Florida, the Middle District of Florida, the Northern District of Florida, and the District of Colorado, as well as the Eleventh Circuit Court of Appeals. Ms. Stern also is AV rated by Martindale Hubble.

Time Spent on the Litigation

12. Counsel's skill and experience were directly responsible for bringing about the positive settlement in the instant case and weigh in favor of granting the requested fees.

13. As of September 4, 2014, SLG has spent more than 227 hours litigating and settling this case, in addition to the lodestar of O&G and YOUNG. This number includes approximately 190.3 attorney hours and 37.2 paralegal and administrative hours. SLG also incurred approximately \$3483.84 in out-of-pocket costs prosecuting this litigation (in addition to those of O&G and YOUNG), which were incidental and necessary to the representation of the Class and which include Plaintiffs' share of the mediator's fees, and travel/transportation costs. Attached as **Exhibit A** is a summary of the time spent by each attorney, paralegal, and support staff member for SLG, and a summary of costs incurred.

14. As of September 4, 2014, SLG's total lodestar on the case was \$93,975.00.

15. Attached as **Exhibit B** are SLG's contemporaneous time records for this case.

16. Due to the experience of its attorneys in representing workers in litigation of this type, SLG is adept at minimizing duplication of efforts and maximizing billing judgment and makes every effort to have the work performed by the attorney or paralegal with the lowest hourly rate who is able to effectively perform each task.

17. The hours reported are reasonable for a case of this complexity and size and were compiled from contemporaneous time records maintained by each attorney, paralegal, and support staff person participating in the case.

18. Class Counsel is requesting one-third of the settlement fund for attorneys' fees, for SLG, O&G, and YOUNG. In our experience, law firms that represent plaintiffs in employment matters like this matter typically charge their clients legal fees of at least one-third of their gross recoveries when they represent them on a contingency basis.

19. The requested attorneys' fees are not based solely on time and effort already expended; they are also meant to compensate Class Counsel for time that they will be required to

spend administering the settlement in the future. In our experience, administering class settlements of this nature and size requires a substantial and ongoing commitment. Class Counsel expects to respond to more Class Member inquiries after final approval, especially after checks are issued.

Rates

21. SLG ordinarily and regularly bills legal time on an hourly fee basis by the tenth of an hour, based upon each attorney's standard hourly rate. Currently, SLG's complex litigation rates range from \$200 to \$550 per counsel's hour, \$100 to \$150 per law clerk's hour, and \$100 per paralegal's hour. The firm's rates have regularly been deemed acceptable and customary in the marketplace for complex litigation. *See, e.g., Clem v. Keybank, N.A.*, S.D.N.Y. Case No. 13 Civ. 789; *Yuzary v. HSBC Bank USA, N.A.*, S.D.N.Y. Case No. 12 Civ. 3693; *Beckman v. KeyBank, N.A.*, S.D.N.Y. Case No. 12 Civ. 7836; *Hernandez v. Merrill Lynch & Co., Inc., et al.*, S.D.N.Y. Case No. 11 Civ. 8472; *Palacio v. E*TRADE Financial Corp., et al.*, S.D.N.Y. Case No. 10 Civ. 4030.

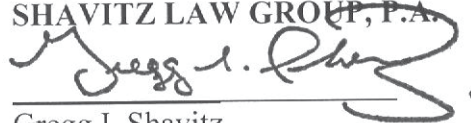
22. Thus, when SLG lawyers spend time on selected contingency matters, they do so at significant risk and opportunity cost for the firm. SLG frequently turns away additional cases, including hourly litigation matters and other contingency matters, in order to enable its attorneys to work on pending contingency matters, primarily (though not exclusively) class or collective actions.

23. In Plaintiffs' Counsel's estimation, the settlement represents a significant percentage of the recovery that Plaintiffs would have achieved had they prevailed on all of their claims and survived an appeal.

I declare under penalty of perjury, under 28 U.S.C. § 1746, that the foregoing is true and correct.

Dated: September 08, 2014
New York, New York

Respectfully submitted,
SHAVITZ LAW GROUP, P.A.

A handwritten signature in dark ink, appearing to read "Gregg I. Shavitz", is written over a horizontal line.

Gregg I. Shavitz

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